

TOWN OF EGREMONT, MASSACHUSETTS
MEETING OF THE ZONING BOARD OF APPEALS
SPECIAL PERMIT HEARING - Michael Straher & Leslie Davenport
MINUTES

Date: December 8, 2021

Time: 5:01PM

Place: Egremont Town Hall & Zoom Meeting
Egremont

Members present in person at Town Hall were Chair Cathy Fracasse, and Rolfe Tessem, present via zoom was Mark Holmes.

Others participating via zoom: Michael Straher, David Seligman, Alex Thorpe, Kate McCormick, Juliette Haas, Roshea ?.

The meeting was video and audio recorded.

The hearing was called to take action on the application of Michael Straher and Leslie Davenport to alter the residential structure on the pre-existing, non-conforming lots at 24 & 0 Lakeside Drive in Egremont in accordance with zoning bylaw 4.3.1.5.

Chair Fracasse read the governing bylaw into the record:

“4.3.1.5. Reversion to Nonconformity Preexisting nonconforming structures or uses may be extended, altered or changed to another nonconforming use by special permit from the Zoning Board of Appeals provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. In addition, any alteration, reconstruction, extension, or structural change to a one-family or two-family building or structure that complies with the three minimum yard in feet requirement and with the maximum height in feet requirement set forth in §4.1.2.1 shall be permitted by right, whether or not the lot on which such alteration, reconstruction, extension or structural change is being made meets the minimum lot area and minimum frontage in feet requirements of §4.1.2.1.”

Kate McCormick, Attorney of record for Michael Straher and Leslie Davenport explained that the two lots predate the 1967 zoning bylaw by 10 years as the lots were created in 1957 making them grandfathered. The applicant seeks to raze the structure currently on lot 24, combine the two lots, and construct a new structure that will be less non-conforming though still non-conforming. The Egremont Zoning Bylaw allows the alternation and extension of a pre-existing, non-conforming structure by special permit and Chapter 40A, Section 6 also allows it. As the current structure is in disrepair, the proposed alterations are consistent with the neighboring houses, and the lots will be merged so there will not be a second non-conforming lot that could be developed the proposal should be found as not detrimental to the neighborhood. Attorney McComick referenced history with the Board of Health who condemned and sought the immediate removal of the current structure, and pending applications and approvals with the Conservation Commission. The property owner seeks to protects their rights and has stabilized the structure. Due to pandemic concerns and other issues the process has been slowed down. Clarification was made to note that the new structure will essentially be on the footprint of the current. Additional floors are being added, the current structure is a single story. The new structure compares favorably to the surrounding area, lots 28, 43, 38, 62, and 8. There are both larger and smaller structures in the area.

Alex Thorpe, engineer/architect for the applicant, shared his screen and reviewed the plans for the lot and the new structure with an overlay on the current footprint, noting that in all areas the non-conformity is

being made less.

A site visit was conducted by the full Zoning Board of Appeals membership.

Member Mark Holmes noted the new structure will be 35', which is the maximum height allowed by the Egremont Zoning Bylaw. He asked for clarification on how that was being measured. Mr. Thorpe responded that as there is no defined area of measurement in the bylaw, they measured from the lowest grade on the lot to the top of the building.

Chair Cathy Fracasse asked if the grade was to be raised in any area. Alex Thorpe responded that in the interior of a stone walled area there would be fill to raise the grade if approved by the Conservation Commission.

Juliette Haas, Board of Health director, read the attached statement into the record, giving history of the structure and lots going back to 2011 with photos that were shown on screen and are attached. (Attached) Member Rolfe Tessem noted that the Board was aware of the history but that the Board's role was to decide if the use is any more non-conforming than current. Chair Fracasse said that Legal Counsel had been asked for advice on this matter in relation to the Board of Health's order to condemn and demolish the building. The legal ruling is that those actions have no effect on the standing as a pre-existing, non-conforming structure, even if the structure had already been demolished. Mark Holmes noted that even if the structure was demolished the lots remain grandfathered. Juliette Haas agreed that the history should have no standing with the actions of the Zoning Board of Appeals on the special permit application. She hoped that if the special permit was approved the current structure would be demolished immediately.

Attorney McCormick said the current structure would come down in concert with the new construction. Once the wetland delineation is completed, all plans are in place, so the alterations will be ready to roll.

There was no feedback or comments from any abutters.

David Seligman, Chairman Egremont Conservation Commission, reported that the application for wetland delineation is in peer review and continues to be in front of the Commission. Resolution may be as soon as December 16. It is very complicated and wet property abutting Prospect Lake requiring detailed delineation and probably mitigation.

Board members agreed that their role was not impacted by concerns of the other town boards, the purview is to determine the nature of the pre-existing, non-conformity and to consider the criteria in the zoning bylaw. The Board of Health and Conservation Commissions will do their job.

Attorney McCormick concurred that permits from all town boards will be in place before the project moves forward, or anything happens on the property, including

The Board voted as follows:

6.2.4.1 The proposed alteration is in compliance with all other provisions and requirements of the Bylaw, and in harmony with its general intent and purpose.

6.2.4.2 The proposed alteration essential or desirable to the public convenience or welfare at the proposed location.

6.2.4.3 The proposed alteration is not detrimental to adjacent uses or to the established or planned future character of the neighborhood.

6.2.4.4 The proposed alteration will not create undue traffic congestion, or unduly impair pedestrian

safety.

6.2.4.5 The proposed alteration will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to the hazards affecting public health, safety or general welfare.

The Zoning Board of Appeals members voted unanimously to approve the special permit application as submitted.

The hearing closed at 6:00pm.

Mary Brazie,
Office Administrator

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The recording of the minutes is on record at the Town Hall for 90 days. Anyone who wishes to may obtain a copy or listen to the recording at Town Hall. Attachments are on file at Town Hall.